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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/726,182	12/02/2003	Brian W. Brandner	2681.3184.001 (588AW)	2575

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REISING, ETHINGTON, BARNES, KISSELLE, P.C.  
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TROY, MI 48099-4390

EXAMINER
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BRADEN, SHAWN M

ART UNIT	PAPER NUMBER
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3781

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/17/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/726,182

Applicant(s)

BRANDNER ET AL.

Examiner

Shawn M. Braden

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 January 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 9-12 and 22-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 9-12&22-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Continued Examination Under 37 CFR 1.114***

1. The request for a continued prosecution application (CPA) under 37 CFR 1.53(d) filed on [1] is acknowledged. 37 CFR 1.53(d)(1) was amended to provide that the CPA must be for a design patent and the prior application of the CPA must be a design application that is complete as defined by 37 CFR 1.51(b). See *Elimination of Continued Prosecution Application Practice as to Utility and Plant Patent Applications*, final rule, 68 *Fed. Reg.* 32376 (May 30, 2003), 1271 *Off. Gaz. Pat. Office* 143 (June 24, 2003). Since a CPA of this application is not permitted under 37 CFR 1.53(d)(1), the improper request for a CPA is being treated as a request for continued examination of this application under 37 CFR 1.114.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 9,22,23 are rejected under 35 U.S.C. 102(e) as being anticipated by Ries (US Pub 2003/0124281).

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4. With respect to claim 9 and 23, Ries shows a shell (10) defining an interior for holding fuel and having an opening for receiving fuel into the interior; a fill nipple having an outer surface (9) and an inner surface (6) defining a passage extending between a pair of generally opposed ends of the fill nipple with one end attached to the shell with the passage aligned with the opening allowing fuel to flow through the passage and into the cavity, the fill nipple has an inner layer of material forming the inner surface of the fill nipple, an outer layer of material forming the outer surface of the fill nipple, a vapor barrier layer between (paragraph 39) the inner and outer layers, and a pair of adhesive layers (8,9) with one adhesive layer disposed between the outer layer and the vapor barrier layer and the other adhesive layer disposed between the inner layer and the vapor barrier layer and; a cover (6 which is also the inner surface of the nipple) connected to the shell and the fill nipple and spanning the area of attachment of the fill nipple to the shell.

5. With respect to claim 22, Ries shows the shell (10) includes an outer layer and an inner layer, and the inner layer of the fill nipple is attached to the outer layer of the shell and the cover is attached to the outer layer of the fill nipple and the outer layer of the shell (fig. 2).

6. Claims 9-12 & 23-25 are rejected under 35 U.S.C. 102(e) as being anticipated by Frohwein (US PUB No. 2005/0211298).

7. With respect to claim 9, Frohwein shows a shell (T) defining an interior for holding fuel and having an opening for receiving fuel into the interior; a fill nipple having an outer surface (42) and an inner surface (surface of 50) defining a passage (50)

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extending between a pair of generally opposed ends of the fill nipple with one end attached to the shell with the passage aligned with the opening allowing fuel to flow through the passage and into the cavity, the fill nipple has an inner layer of material forming the inner surface (surface of 50) of the fill nipple, an outer layer of material forming the outer surface of the fill nipple, a vapor barrier layer between (42a) the inner and outer layers, and a pair of adhesive layers (42b&e) with one adhesive layer disposed between the outer layer and the vapor barrier layer and the other adhesive layer disposed between the inner layer and the vapor barrier layer and; a cover (48) connected to the shell and the fill nipple and spanning the area of attachment of the fill nipple to the shell.

8. With respect to claim 10, Frohwein shows the cover (48) includes a polymeric vapor barrier layer (42)

9. With respect to claim 11, Frohwein shows one end is defined in part by a radially outwardly extending flange (fig.1)

10. With respect to claim 12, Frohwein shows a weld joint (48a).

11. With respect to claim 23, Frohwein shows a shell (T) defining an interior for holding fuel and having an opening for receiving fuel into the interior and a vapor barrier layer, a fill nipple (10) having an outer surface (42) and an inner surface (surface of 50) defining a passage extending between a pair of generally opposed ends of the fill nipple with one end at least partially overlapped with and attached to the shell (blow up in fig. 1) with the passage aligned with the opening allowing fuel to flow through the passage and into the cavity, the fill nipple has an inner layer of material forming the inner surface

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(surface of 50) of the fill nipple, an outer layer (42d) of material forming the outer surface of the fill nipple, and a vapor barrier layer (42a) between the inner and outer layers, wherein the vapor barrier layer overlies the fuel tank vapor barrier layer along the entire extent of the overlap of the fill nipple and shell providing two vapor barrier layers (one in the tank T and 42a in the nipple) along the entire extent of the overlap of the fill nipple and shell (see blow up in fig. 1). (Frohwein inherently has a vapor barrier layer in the tank T, it is well know in the art. Why would they bother sealing the nozzle if the tank didn't have a vapor barrier.)

12. With respect to claim 24, Frohwein shows the end not attached to the shell is constructed to carry a hose and a hose clamp meeting the recitation of two separate components.

13. With respect to claim 25, Frohwein shows a radially inwardly extending flange (between elements 50 and 56 fig 1) and a radially outwardly extending flange (44) (fig. 1).

### ***Response to Arguments***

14. Applicant's arguments with respect to claims 9-12,22-25 have been considered but are moot in view of the new ground(s) of rejection.

**Conclusion**

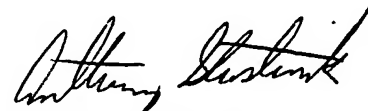
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shawn M. Braden whose telephone number is (571)272-8026. The examiner can normally be reached on Mon-Friday 9-6:30 est.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571)272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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